

# Taxpayer Rights

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## 9.0 Overview of Taxpayer Collection Appeal Rights

(1) This section discusses the rights taxpayers have to appeal collection actions, proposed or taken, and the related appeal procedures.

(2) The specific appeal rights being addressed include the Due Process appeal rights.

C IRC 6320 which gives the taxpayer the right to appeal the filing of a Notice of Federal Tax Lien.

C IRC 6330 which gives the taxpayer the right to appeal before levy action is taken.

and appeal rights under the Collection Appeals Program (CAP).

C IRC 6159 which gives the taxpayer the right to appeal the Service's rejection or termination of an installment agreement.

C IRC 7123 gives the taxpayer appeal rights that the Service provides for through the existing Collection Appeals Program.

(3) Taxpayers have additional appeal rights, including those related to assessment of the trust fund recovery penalty, offers in compromise, abatement of penalty assessments due to reasonable cause, and jeopardy levies. These appeal rights and procedures are addressed in the corresponding IRM chapters.

## 9.1 Informing Taxpayers of Their Appeal Rights

(1) Taxpayers need to be kept informed of their rights to appeal collection actions. The following publications and forms explaining appeal rights and provisions should be readily available in Collection offices to provide to taxpayers:

C Publication (Pub.) 594, The IRS Collection Process, addresses general appeal provisions.

C Pub. 1660, Collection Appeal Rights, provides detailed information regarding the collection appeal rights and procedures under Due Process and the Collection Appeals Program.

C Form 9423, Collection Appeal Request

C Form 12153, Request for a Collection Due Process Hearing

(2) Revenue officers need to be able to explain the appeal provisions to taxpayers and answer questions taxpayers may have regarding their right to appeal.

(3) Statutory provisions under IRC § 6320 and IRC § 6330 require the Service to provide taxpayers with written notification of their appeal rights. Refer to the Due Process section, 9.2.

(4) Collection personnel are required to advise taxpayers of their right to appeal under the Collection Appeals Program (CAP) when an installment agreement is rejected or about to be terminated. Refer to the CAP section, 9.3.

(5) Collection personnel need to provide taxpayers with Pub. 1660 prior to seizure action.

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9.2 Due Process Appeals (1) The Restructuring and Reform Act (RRA) of 1998 established the Due Process appeal rights under IRC 6320 and IRC 6330. These provisions apply to levy and lien actions taken after January 18, 1999.

9.2.1 Notice of Due Process Appeals Rights (1) The Due Process appeal provisions give taxpayers an opportunity for an independent review to ensure that the levy or lien action by Collection is warranted. In the Collection Field function, attempted contact with the taxpayer or alternative methods for resolving the case, such as installment agreements and offer in compromise, should be explored before levy or lien action is considered.

(2) IRC 6320 gives taxpayers the right to request a hearing during the 30 calendar day period that begins on the day after the five business day period after the filing of a Notice of Federal Tax Lien.

C Letter 3172(DO), Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320, will be given in person, left at the dwelling or usual place of business, or sent by certified mail to the last known address not more than 5 business days after the day of the filing of the Notice of Federal Tax Lien.

C This notice is required only once for the taxable period and unpaid tax which is the subject of the lien filing. A second notice may be required if an additional assessment of tax is made after the original Letter 3172 was issued. Refer to the Federal Tax Lien Handbook, IRM 5.12.

C For a joint income tax liability, each spouse will individually be sent a Letter 3172 explaining the right to a hearing at his or her last known address. Two separately addressed notices are sent even if both spouses are at the same address. Refer to the Federal Tax Lien Handbook, IRM 5.12, for information on the issuance of this notice.

(3) IRC 6330 gives taxpayers the right to request a hearing during the 30-day period that begins on the date of the Notice of Intent to Levy and Your Notice of a Right to a Hearing.

C This Notice of Intent to Levy and Your Notice of a Right to a Hearing will be given in person, left at the dwelling or usual place of business, or sent by certified mail, return receipt requested, to the taxpayer's last known address not less than 30 days before the day of the first levy.

C Information regarding how the notice was sent, delivered, or left at the dwelling or business must be documented in the case history. In addition, request input of appropriate TC 971 action codes. Refer to the Notice of Levy Handbook, IRM 5.11.

C This notice is required only once for the taxable period and unpaid tax which is the subject of the pre-levy notice. A second notice may be required if an additional assessment of tax is made after the original notice was issued. Refer to the Notice of Levy Handbook, IRM 5.11.

C For a joint income tax liability, when an L1058, Notice of Intent to Levy and Your Notice of a Right to a Hearing, is issued in the field, each spouse will individually be given or sent, to his and her last known address, the letter explaining the right to a hearing. Two separately addressed notices are sent even if both spouses are at the same

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address. Refer to the Notice of Levy Handbook, IRM 5.11, for information on the issuance of the pre-levy notice.

(4) There are two exceptions to the pre-levy notice requirements of IRC 6330. They are:

- C when the collection of tax is in jeopardy under section 6331(a), or
- C a levy is served on a state to collect a Federal tax liability from a state tax refund.

In both of the above situations, the taxpayer will be given the opportunity for a Collection Due Process (CDP) hearing within a reasonable period of time after the levy. Refer to 9.2.11.

### 9.2.2 Request for Due Process Hearing Rights

(1) Every effort should be made to resolve the account or issue with the taxpayer without the need for a taxpayer to file a formal appeal. This would include having the group manager intercede in discussions with the taxpayer. However, taxpayers entitled to request an appeal under the due process provisions need to be advised of the requirements and time frames for filing an appeal. It is important to inform taxpayers that discussions with Collection do not suspend the running of (or otherwise extend) the 30-day period during which taxpayers may request a Collection Due Process hearing.

(2) If the taxpayer wants to file a request for a hearing,

- C it must be in writing;
- C it must be within 30 days of the date of the Notice of Intent to Levy and Notice of Your Right to a Hearing or within the 30 days beginning with the day after the five business day period of the filing of the Notice of Federal Tax Lien; and
- C it must be signed by the taxpayer(s) or the taxpayer(s) representative.

(3) Taxpayers are requested to use Form 12153, Request for Collection Due Process Hearing, to request the appeal. This form is included with the Notice of Intent to Levy and Notice of Your Right to a Hearing and the Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320. If this form is not used, a written request for a Collection Due Process hearing signed by the taxpayer or authorized taxpayer representative can be used. Advise taxpayers to include the following information.

- C Taxpayer name(s), address, and daytime telephone number. If the tax liability is owed jointly by a husband and wife and they both wish to request the hearing, both names must be listed and both taxpayers must sign the request.
- C Type of tax(es), taxable period(s), and the taxpayer identification number(s). Taxpayers are asked to include a copy of the notice with the requests. If a copy of the notice is included, the request would be processed to include all taxes and periods listed on the notice. If a copy of the notice is not included, unless the taxpayer explicitly indicates otherwise, a timely request for a CDP hearing is inferred to include all periods entitled to a CDP hearing that were listed on the CDP hearing

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notice. (Refer to 9.2.6 for information on processing requests.)

C A statement that this is a request for a hearing concerning the filing of the Notice of Federal Tax Lien or proposed levy action.

(4) The taxpayer is asked to file the request for the hearing with the employee or function initiating the action. Cases assigned to the Collection Field function will have the assigned revenue officer's name and address listed on the Collection Due Process (CDP) hearing notice.

(5) The request for a CDP hearing should be stamped with the received date. A timely filed request for a hearing suspends the statutory period of limitations on collection, criminal prosecutions, and other suits for the period that is being appealed. Timely mailed constitutes timely filed if the taxpayer's request for a CDP hearing is correctly addressed to the IRS office listed in the CDP hearing notice or if that address is not known, to the District Director serving the district of the taxpayer's residence or principal place of business.

(6) If the request for the hearing is received after the IRC 6320 or 6330 notice period, the taxpayer is entitled to receive an "equivalent" hearing. Refer to the section 9.2.5, "Equivalent" Hearing.

### 9.2.3 Levy Action during the Due Process Appeal Period

(1) If the taxpayer files a timely request for a Collection Due Process (CDP) hearing during the IRC 6320 or IRC 6330 notice period, levy actions must be suspended during the appeal period and while any further appeals, to Tax Court or district court, as applicable, are pending.

(2) However, during an appeal to Tax Court or federal district court where the underlying tax is not at issue in the appeal, levy action may continue if the court determines that the Service has shown good cause not to suspend the levy. If it is determined that continued levy action is warranted during an appeal to Tax Court, prepare a memo requesting District Counsel to petition the court to allow the Service to take levy action.

(3) Levy action is suspended only for the tax periods that are the subject of the Collection Due Process (CDP) hearing. Refer to 9.2.6 for procedures on determining tax periods that are the subject of the CDP hearing. Levy action can continue on tax periods not subject to the CDP hearing, provided all pre-levy notifications have been met. However, as a general rule, in such situations, levy action is suspended during the appeal period even when not required by statute. When it is determined that lien or levy action on periods not subject to the CDP hearing is appropriate, i.e., collection is at risk, the lien or levy action must be approved by the group manager.

(4) In joint liability situations, where only one spouse has requested a CDP hearing, collection action can continue with respect to the spouse who has not requested an appeal. This will most often occur in situations where the spouses are separated or divorced.

(5) In a situation where a levy has been issued, and then the taxpayer files an appeal, either a timely CDP Appeal under IRC 6320 or an equivalent hearing under IRC 6320 or 6330, determine if the levy should be released. If the levy is

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not released, advise the levy source to delay sending the payment and refer the matter to Appeals through the Collection Appeals Program for an expedited review of the levy issue.

**Example:** The taxpayer does not respond to the pre-levy notice. A continuous wage levy is issued. The revenue officer then files a Notice of Federal Tax Lien. The taxpayer receives the IRC 6320 CDP hearing notice and files a timely request for a CDP hearing. A decision needs to be made whether or not to release the levy.

(6) If it is determined that the Notice of Intent to Levy and Notice of Your Right to a Hearing was not properly mailed to the taxpayer's last known address, release the levy and resend the notice if levy action is required. Proper notification under IRC 6330 is required prior to levy action.

## 9.2.4 Suspension of Collection Statute of Limitations

(1) The statute of limitations is suspended from the date the Service receives a timely filed request for a due process hearing to the date the determination from Appeals becomes final.

C The date the determination from Appeals becomes final is the date the 30-day period within which the taxpayer could appeal to the Tax Court or district court expires, if the taxpayer does not exercise his/her right to seek judicial review.

C If the taxpayer timely commences the appeal process to the Tax Court or to a federal district court, the statute of limitations is suspended and the determination is not final until the completion of any judicial review.

C If 90 days is not remaining on the statute of limitations when the determination becomes final, the statute of limitations is recomputed to allow for this 90 day period.

## 9.2.5 "Equivalent" Hearing

(1) If the request for the appeal is received after the IRC 6320 or IRC 6330 notice period, the taxpayer is still afforded the opportunity for an independent review conducted by the Office of Appeals. This appeal is conducted in a similar way to the Collection Due Process appeal and is referred to as an "equivalent" hearing with an important difference.

(2) In an "equivalent" hearing, the decision by Appeals is final. The taxpayer cannot appeal the decision to Tax Court or federal district court, except as it relates to certain spousal defenses under IRC 6015 (b) or (c).

(3) Levy action during an "equivalent" hearing is not required to be suspended. However, as a general rule, even when not required by statute, levy action is suspended during the appeal period. When it is determined that lien or levy action during the appeal is appropriate, i.e., collection is at risk, the lien or levy action must be approved by the group manager. The lien or levy actions can be appealed under CAP while the equivalent hearing is in process.

(4) In a situation where a levy is pending when the taxpayer files a request for an equivalent hearing, determine with the help of the group manager if the levy should be released. If the levy is not released, advise the levy source to delay sending the payment and refer the matter to Appeals through the Collection

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Appeals Program for an expedited review of the levy issue.

(5) If it is determined that the Notice of Intent to Levy and Right to a Hearing was not properly mailed to the taxpayer's last known address, release the levy and send the notice to the taxpayer's last known address if levy action is warranted. Proper notification under IRC 6330 is required prior to levy action.

(6) The statute of limitations on collection is not suspended during the "equivalent" hearing.

## 9.2.6 Processing Requests for Collection Due Process and "Equivalent" Hearing

(1) Upon receipt of a written request for a Collection Due Process (CDP) or "equivalent" hearing, review the request for completeness. If necessary, contact the taxpayer to clarify information needed to process the request.

- C Unless the taxpayer explicitly indicates otherwise, a request for a CDP hearing is inferred to include all periods entitled to a CDP hearing that were listed on the CDP hearing notice.
- C If the taxpayer includes periods that are not subject to the CDP hearing, determine if the taxpayer is entitled to receive an "equivalent" hearing. If so, process the request as a request for an "equivalent" hearing.
- C If the taxpayer includes periods that previously received a CDP hearing (indicated by a TC 520 cc 70, see (3) below), process the request as a request for an appeal under the retained jurisdiction provisions. Refer to 9.2.10.
- C On joint liability requests, both spouses need to sign if both are making the request.
- C Any corrections the taxpayer wishes to make to a timely filed CDP request must be made with Collection before the hearing or at the time of the hearing with Appeals. Appeals will notify Collection of any changes that they receive that effect the levy or collection suspensions.
- C Taxpayers need to request any changes in writing or if the changes are made to the original request form, the changes need to be initialed by the taxpayer.

(2) Determine if the collection statute needs to be suspended. The collection statute is suspended only when a taxpayer files a timely request for a CDP hearing. The taxpayer has one opportunity to request a CDP hearing for the taxable period and unpaid tax which is the subject of the lien filing or pre-levy notice.

Example: A taxpayer receives a 6330 notice for 941 taxes for period ended 12/31/98 while the account is in ACS. No request for a CDP hearing is filed. The account is transferred to the Collection Field function. A 941 tax liability for the subsequent quarter is received. The revenue officer issues a 6330 notice on 06/10/99 for the subsequent quarter and includes the 941 for the period ended 12/31/98. The taxpayer files a Request for a Collection Due Process Hearing on 06/30/99 and includes a copy of the notice sent by the revenue officer. The taxpayer would be entitled to receive the following:

- C 941 for 12/31/98 - an equivalent hearing, no suspension of the collection statute.

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C 941 for 03/31/99 - a CDP hearing, collection statute is suspended.

(3) If the collection statute is to be suspended, prepare a request to input a TC 520 cc 70 for each module subject to the collection statute suspension. The TC 520 places the module in status 72. The TC 520 reflects the beginning date of the collection statute suspension. The Collection Statute Expiration Date (CSED) will be updated at the conclusion of the appeal, when the new CSED is known, by input of a TC 550. For hearings involving an IMF joint return it is necessary to request input of the appropriate IMF CSED TIN indicator. The applicable IMF CSED indicators are:

C "P" - indicates the CSED applies to the primary TIN  
< "S" - indicates the CSED applies to the secondary TIN  
< "B" - indicates the CSED applies to both TINS.

(4) The Collection Field function will send the request for input of the TC 520 to SPf on a Form 3210, Document Transmittal, along with a copy of the Form 12153, Request for Collection Due Process Hearing. The copy of the Form 12153 will help SPf identify the reason for the request. Upon completion of the appeal, Appeals will request SPf to reverse the TC 520 and input the the TC 550 along with the applicable IMF CSED indicator. Appeals will provide SPf with the TC 550 date and applicable IMF CSED indicator. (Refer to 9.2.9 (6).)

(5) In some situations (i.e., pyramiding in-business taxpayer), it may be appropriate for the revenue officer to monitor the case while it is in Appeals. For accounts in status 72, open an other investigation (OI) for monitoring purposes.

(6) In situations where the collection statute is not suspended, for example "equivalent" hearings, the case will stay in open collection status, status 26. Since, in most instances, collection action will be suspended pending the outcome of the appeal and because of the varying time frames for the appeal hearing, it may be appropriate for the group manager to have the case uniquely assigned on IDRS within the group for purposes of controlling and monitoring the case during the "equivalent" hearings. In other instances, it may be appropriate to keep the case assigned to the revenue officer.

(7) Due to the requirements of the hearing, it will be necessary for Appeals to review a copy of the entire case file. Refer to 9.2.7, Appeal Process.

(8) In most instances, as a result of efforts to resolve the account by alternative methods, such as installment agreements and offer in compromise, prior to lien or levy action, sufficient information should be available in the case file to assist Appeals in its determination.

(9) In some instances, the request for an appeal may be the first contact with the taxpayer. The taxpayer may, for the first time, raise a concern about a misapplied payment or request an installment agreement. In these situations, it may be appropriate to contact the taxpayer. The purpose of the contact is to expedite resolution of the case. If the taxpayer is willing, see if the issue can be resolved. If so, take the necessary actions and document the case file. It is still necessary to forward the case to Appeals. Agreement with the taxpayer at this

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stage, will expedite the appeal process, not prevent it. If the issue cannot be quickly resolved, the case must go forward to Appeals. Do not make an ongoing effort to resolve the case, once the request for an appeal is received.

(10) It is important to forward to Appeals a well-organized and fully documented case file of the collection contacts and actions taken. The case file will serve as the basis for Appeals determination on whether the requirements of the Internal Revenue Code (IRC) or administrative procedure have been met.

(11) Include a summary statement of the case actions. The summary should address the reason for the lien or levy action, collection alternatives offered by collection or the taxpayer, and why these options were not viable. In addition, in some situations, especially those pertaining to seizure action or cases with extensive case history, it may be helpful to include a checklist of significant case actions and applicable dates. Refer to 9.4, Communication with Appeals.

(12) Appeals will rely on Collection to secure all information and files pertaining to the taxpayer's appeal, such as original tax return/RAR, trust fund recovery penalty file, or any other information that Appeals needs to make its determination. Any additional information, not included in the original file going to Appeals, will be requested by Appeals via Form 2209, Other Investigation or other locally acceptable form.

(13) Send the entire case file through the group manager to Appeals using Form 3210, Document Transmittal. Document on the Form 3210 the periods being addressed in the hearing request and indicate whether a TC 520 was requested and the date of the TC 520, if applicable. The group manager should ensure that the TC 520 was appropriately requested.

(14) The turnaround time of the case in Appeals will depend on the issues to be addressed. Appeals needs time to conduct the hearing and make its determination. For a timely filed appeal, the taxpayer will also have the opportunity to file an appeal to Tax Court or a federal district court, as applicable.

### 9.2.7 Appeal Process

(1) The hearing is held by the Office of Appeals. It is conducted by an officer or employee who has had no prior involvement with the respect to the unpaid tax. However, the taxpayer may waive this requirement.

(2) To the extent practicable, a hearing under IRC 6320 shall be held in conjunction with a hearing under IRC 6330.

(3) The appeals officer is required to obtain verification that the requirements of the Internal Revenue Code or administrative procedure have been met. Appeals will rely on the information in the case file or will seek clarification of items that appear to be incomplete within the case file.

(4) During the appeal process, the taxpayer or his or her representative may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including:

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- C appropriate spousal defenses;
- C challenges to the appropriateness of collection actions; and
- C offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(5) The taxpayer may also raise issues related to a hardship determination.

(6) The taxpayer may also raise challenges to the existence or amount of the underlying tax liability for any tax period if he or she did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

(7) An issue may not be raised at the hearing if:

- C the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and
- C the person seeking to raise the issue participated meaningfully in such hearing or proceeding.

### 9.2.8 Appeal Determination

(1) The Appeals determination will take into consideration the following:

- C the verification that the requirements of the Internal Revenue Code or administrative procedure have been met;
- C the issues being raised; and,
- C whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

(2) For a timely filed due process hearing, the taxpayer will receive a Notice of Determination letter that explains the taxpayer's right to petition the court of jurisdiction within 30 days of the date of the letter.

(3) For an "equivalent" hearing, the taxpayer will receive a decision letter. In an "equivalent" hearing the decision by Appeals is final, except as it relates to certain spousal defenses under IRC 6015(b) or (c).

(4) In both the appeal Notice of Determination letter and decision letter, Appeals will provide clear information regarding any agreement reached with the taxpayer, any relief given, and any necessary actions required by Collection. If the tax liability is upheld or the enforcement action is valid, the letter will so state even if the appeals officer decides to provide the taxpayer a different collection alternative. The letter will also set forth specific ramifications should the taxpayer not comply with the terms of the agreement.

(5) Appeals will generally follow the Service guidelines for collection set forth in the Internal Revenue Manual (IRM). Appeals, however, also considers the impact of the hazards of litigation. In addition, Appeals is required to balance tax collection needs with the legitimate concerns of the taxpayer that any collection action be no more intrusive than necessary.

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### 9.2.9 After the Appeals Determination

(1) After Appeals makes its determination in a Collection Due Process (CDP) hearing, the taxpayer may, within 30 days of the date of the letter, appeal the determination to the Tax Court or if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

(2) If a court determines that the appeal was to an incorrect court, the taxpayer has 30 days after the court determination to file an appeal with the correct court.

(3) In a CDP appeals case, since the taxpayer has additional appeal rights, Appeals will hold the case for 60 days after issuing the Notice of Determination to the taxpayer. Collection will receive a copy of the Notice of Determination letter when it is issued to the taxpayer. If the taxpayer contacts us in response to the Notice of Determination, we can assist the taxpayer in carrying out the decision of Appeals, i.e., installment agreement. However, no enforcement action can be taken until the determination is final. If no further appeals are filed, the Notice of Determination is final.

(4) In an "equivalent" hearing the decision is final when Appeals issues its decision letter, except as it relates to certain spousal defenses under IRC 6015 (b) or (c).

(5) Once the determination is final, a copy of the Notice of Determination letter or the decision letter, as applicable, along with a copy of the Appeals case memo (ACM) will be sent to Collection on Form 3210, Document Transmittal.

(6) For Due Process Hearings, Appeals will forward a second Form 3210 to the District SPf. The Form 3210 will be noted "Collection Due Process Appeal". It will include a request to reverse the TC 520 cc 70 and a request to input the TC 550. The TC 550 request will include the new Collection Statute Expiration Date (CSED) and the appropriate IMF CSED Indicator (see 9.2.6). Upon receipt, SPf will immediately request input of the TC 550 and the TC 521. The TC 521 will reverse the status 72. The case will return to the status it was in prior to the input of the TC 520.

(7) Collection will be responsible for implementing any agreement worked out in Appeals.

### 9.2.10 Jurisdiction Retained by Appeals

(1) The Office of Appeals retains jurisdiction with respect to any determination made under IRC 6320 or IRC 6330, including subsequent appeals requested by the taxpayer who requested the original Collection Due Process hearing on issues regarding:

- C collection actions taken or proposed with respect to such determination, and
- C after the person has exhausted all administrative remedies, a change in the taxpayer's circumstances which affects such determination.

(2) Taxpayers, who request subsequent review of their case by Appeals under the changed circumstance provision under retained jurisdiction, must first exhaust all administrative remedies, such as the Collection Appeals Program (CAP). Taxpayers should be advised of the requirement to use CAP. Refer to

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## 9.3, Collection Appeals Program.

(3) Appeals will review the case first under the CAP provisions. If there has been a change in circumstances with respect to the taxpayer affecting the 6320 or 6330 determination, Appeals, under the retained jurisdiction provision, may consider issues that were raised and considered at the previous hearing.

(4) The statutory period for collection is not suspended during the retained jurisdiction proceeding.

(5) Lien and levy actions are not required by statute to be suspended. However, as a general rule, even when not required by statute, lien and levy actions will be suspended during the retained jurisdiction period. When it is determined that lien or levy action during this period is appropriate, i.e., collection is at risk, the lien or levy action must be approved by the group manager.

(6) Similar to the equivalent hearing, the taxpayer will receive a decision letter upon completion of the review under the retained jurisdiction provision. The decision by Appeals is final with no further appeals to Tax Court or federal district court.

## 9.2.11 Jeopardy Levy and SITLP

(1) There are two exceptions to the pre-levy notice requirements of IRC 6330. They are:

- C when the collection of tax is in jeopardy under section 6331(a), or
- C a levy is served on a State to collect a Federal tax liability from a State tax refund, referred to as the State Income Tax Levy Program (SITLP).

(2) In both of the above situations, when the taxpayer has not previously received a 6330 Notice of Intent to Levy and Notice of Your Right to a Hearing, the taxpayer will be given the opportunity for a hearing within a reasonable period of time after the levy. In a jeopardy levy situation, the taxpayer receives Pattern Letter 2439(P) which advises the taxpayer of the right to request a hearing under IRC 6330. Refer to the Notice of Levy Handbook, IRM 5.11. The SITLP program is temporarily suspended.

(3) In a Jeopardy or SITLP levy situation, the taxpayer is afforded the opportunity for a Collection Due Process hearing. Refer to the Due Process procedures.

## 9.3 Collection Appeals Program

(1) In addition to the Due Process appeal rights discussed above, taxpayers can also appeal certain collection actions under the Collection Appeals Program (CAP).

(2) Taxpayers can appeal under CAP when they are told by an IRS employee that a lien, levy or seizure action will be or has been taken, or that an installment agreement is denied or terminated. The taxpayer's right to appeal under CAP is connected to the specific planned or actual collection action.

(3) When a taxpayer disagrees with a proposed or actual appealable action, advise the taxpayer of CAP, give him or her Pub 1660, Collection Appeal Rights.

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Explain that under CAP, the taxpayer must first discuss the issue with the group manager to see if resolution can be reached. Refer to 9.3.1 below.

(4) When a request for an installment agreement is denied or when an existing installment agreement is terminated, advise the taxpayer of his or her right to appeal under CAP. Refer to the installment agreement procedures.

(5) A taxpayer can appeal before or after a Notice of Federal Tax Lien (NFTL) is filed. A taxpayer can appeal denied requests to withdraw a NFTL filing and denied discharges, subordinations, and non-attachments of lien. Third party claims to property and nominee liens are also appealable under CAP. If a NFTL is filed, a taxpayer may have additional appeal rights under Due Process.

(6) A taxpayer can appeal before or after a levy is issued. The taxpayer may have additional levy appeal rights under Due Process.

(7) Once a seizure action is taken, the taxpayer has 10 business days to appeal the seizure action from the date the Notice of Seizure is provided to the taxpayer, or left at his or her usual abode or place of business. Publication 1660, Collection Appeal Rights, must be included with the Notice of Seizure.

(8) When hardship is the only issue, taxpayers should be advised of their option to file a 911 with the Taxpayer's Advocate Office.

(9) Actions under the control of a court of competent jurisdiction are excluded from this program.

(10) Cases on taxpayers under the control of the Criminal Investigation Division will be excluded from this appeal process.

### 9.3.1 Request for a CAP Appeal

(1) The taxpayer must first discuss the case with the Collection manager. However, if agreement is not reached, advise the taxpayer that he or she can have the issue addressed by the Office of Appeals by filing a request in writing. Advise the taxpayer to use Form 9423, Collection Appeal Request and explain that the completed request needs to be submitted within two business days from the manager conference or collection action may resume.

(2) Collection must send the case to Appeals within two business days of the manager's rejection or receipt of the taxpayer's request, whichever occurs later.

(3) Generally, a copy of the entire case file should be sent to Appeals. However, if this is not possible, then Collection will transmit copies of all pertinent parts of the case file to Appeals via established local procedures using Form 3210, Document Transmittal. Use of fax may be necessary to expedite transmittal of the case to Appeals. Local Appeals and Collection offices need to establish procedures to ensure prompt transmittal of cases.

(4) In some situations, a taxpayer may be entitled to appeal under both CAP and Due Process. Taxpayers need to understand their various appeal rights. If a taxpayer seeking to file a CAP appeal is also entitled to a Collection Due Process (CDP) hearing, ensure that the taxpayer understands the strict time

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frames for requesting a CDP hearing. However, the decision to file a request for a CDP hearing or a CAP appeal belongs to the taxpayer. In some situations, it may be necessary for the taxpayer to file both a CAP appeal and a request for a CDP hearing or “equivalent” hearing. The CAP appeal can provide an expedited review of a specific collection action while the Due Process or “equivalent” hearing is in process.

(5) Enforcement action during a CAP appeal will generally be suspended when the case is in Appeals. However, if enforcement action is appropriate, i.e., collection is at risk, the revenue officer may proceed with enforcement action. Enforcement action during the appeal must be approved by the group manager. Appeals must be advised immediately of any decision to take enforcement action.

### 9.3.2 CAP Process

(1) Appeals employees are expected to close CAP cases within 5 business days. Appeals will attempt to hold a conference with the taxpayer within 2 days of receipt of the case. However, if the taxpayer requests a conference delay and it is warranted, then a reasonable delay will be allowed. Usually, such a delay should not exceed 5 business days. If the taxpayer does not elect a conference within the time limits given, Appeals will return the case to Collection as a premature referral.

(2) The short time frames have been set to give taxpayers an almost immediate decision on liens, levies, seizures, and rejection or termination of installment agreements. It also helps to ensure that taxpayers do not appeal solely to delay collection.

(3) Appeals may contact revenue officers to seek clarification of an illegible or unclear statement in the file or to question them about procedural matters. Refer to 9.4 below, Communications with Appeals.

(4) Appeals will review the case based on law, regulations, policy, procedures (National, regional, local), considering all the facts and circumstances. Local and regional procedures will only be considered if they are written and in accordance with the IRM.

(5) Judgment is likely to be an issue on these types of cases although they can also involve legal or procedural issues. Appeals may reverse Collection’s action if evaluation of the taxpayer’s history and current facts and circumstances reveal a more appropriate solution.

(6) Appeals will inform both Collection and the taxpayer of its decision as soon as possible within the 5 business day time frame. Appeals will contact Collection immediately upon making a decision. The decision may be given verbally followed by a written closing letter.

(7) If Appeals has sustained the collection action, enforcement action may resume upon receipt of the verbal decision. Otherwise, the decision made by Appeals will be implemented. The closing letter should be given to the taxpayer with a copy to Collection and should clearly outline any agreement reached with the taxpayer. In cases where an Application for Taxpayer Assistance Order

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(ATAO) has been filed by the taxpayer, a copy of the closing letter should be given to the controlling Taxpayer Advocate Office.

(8) Decisions by Appeals are binding on the taxpayer and Collection. Collection will take the actions directed by the Appeals decision. However, if the taxpayer defaults in the decision directed by Appeals, Collection is released from the terms of the agreement. The taxpayer may not appeal the same issue under CAP once Appeals has decided the issue on the same fact and basis, i.e., a subsequent levy on the same asset.

(9) Should taxpayers withhold pertinent information or frame a false representation, any agreement made on behalf of the Service will be voidable. Before Collection declares an agreement void under this provision, the Collection group manager will confer with Appeals. If Appeals sustains Collection's determination, then enforcement action may resume immediately.

## 9.4 Communications with Appeals

(1) To ensure an independent appeals function within the Internal Revenue Service, communications between appeals officers and other Internal Revenue Service employees will be limited to ensure that such communications do not compromise the independence of the appeals officers.

(2) Appeals may contact revenue officers to seek clarification of an illegible or unclear statement in the file or to question them about procedural matters. However, a clarification will not include asking for consideration of unconsidered issues or a general discussion of the issues that seeks additional input unless the taxpayer is given an opportunity to participate.

(3) Therefore, it is important to forward to Appeals a well-organized case file with all case actions and contacts clearly and fully documented. Include a summary statement that addresses the reason why the issue could not be resolved. It should also address the collection alternatives offered by Collection or the taxpayer, and why these options were not viable.

(4) In addition, in some situations, especially those pertaining to seizure action or cases with extensive case history, it may be helpful to include a checklist of significant case actions and applicable dates.

## 9.5 Appeal Reports

(1) Cases going to Appeals will be tracked using Appeals UNISTAR program. The following unistar codes are used:

- C CAPLV is used for levies,
- C CAPLN is used for liens,
- C CAPSZ is used for seizures and
- C CAPIA is used for denied or terminated installment agreements.
- C DPLV for Due Process appeals for levies
- C DPLN for Due Process appeals for lien

(2) Closing codes used for CAP cases are:

- C 14 = fully sustained, used when Collection's action is supported with no change.

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- C 15 = not sustained, used when Collection's action is completely overturned. For example, closing code 15 would be used when a levy is released and replaced by an installment agreement.
- C 16 = partially sustained, used when only minor changes are made in Collection's action. For example, if filing of a Notice of Federal tax Lien is proposed, a minor change would be to give the taxpayer 10 more days to come up with the funds before the lien is filed. Closing code 16 is also to be used for situations where the taxpayer presents in Appeals a new acceptable proposal which was not offered to Collection, and which Collection would have accepted had they received it.

(3) Closing codes for due process cases are:

- C Closing code 04 for nonpetitioned/agreed closures.
- C Closing code 42 for petitioned cases.